



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 9947969

Date: NOV. 25, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a marketing professional, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding her claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that she intends to continue her career "as a marketing professional, with a specialized focus on information technology (IT)." She stated that her proposed endeavor involves "serving [redacted] Sales team – specifically managing the travel, retail, and transportation sales territory and division." The Petitioner further asserted: "I will design, manage, and launch the marketing strategies of numerous [redacted] products and services. I will also direct the company's selling agreements and negotiations across the United States, specifically serving the retail, travel, and transportation divisions."⁴

The Petitioner provided an August 2019 letter from [redacted] vice president for [redacted] Systems Servers at [redacted] listing the Petitioner's job functions:

- Engage new and established clients in business conversion regarding [redacted] products;
- Identify and qualify business opportunities, while addressing clients' availability, security, and application pertaining to modernization challenges;
- Driving critical business applications into new and existing accounts for expanded workload areas regarding the [redacted] platform;
- Design, develop, and maintain a sales territory plan to define, and expand, suitable [redacted] business targets;
- Cooperate with several of [redacted]'s business partners and other [redacted] departments, such as Software Sales, Sales Operations, Global Technology Services, and Customer Success, to build creative solutions for client requirements;
- Build and lead ad-hoc cross functional teams;
- Lead [redacted] sales engagement processes;
- Develop sales solutions for the following functions: disaster recovery, test/development modernization, business analytics, packaged applications.

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about this position to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

Additionally, the Petitioner states on appeal that “she is currently dedicating part of her time into mentoring start-ups in the use of [redacted] technology, alongside investment groups such as [redacted] that coordinates technology incubators.”⁵ She further contends that she is “supporting [redacted] into bringing and strategically positioning the [redacted] technology to support [redacted] processes in the field of mining.”⁶

The record contains information about the industry outlook for U.S. marketing consultants; three industries facing talent shortages (business services, technology, and manufacturing); the changing role of IT in the future of business; the technology industry’s impact on U.S. economic growth; and the science, technology, engineering, and mathematics (STEM) crisis as a threat to U.S. national security. In addition, the Petitioner provided articles discussing marketing’s effect on an organization, the ways marketers are driving business growth, the power of global marketing in the 21st century, improving business through IT, the growing importance of the technology economy, the role of the chief marketing officer in reviving business success, business and IT alignment, and a projected shortfall in STEM professionals. She also offered information about the value of marketing as a key driver of business, five ways technology can help the economy, opportunities and challenges relating to big data, immigration as a solution for worker shortages, the global talent crunch, digital transformation of the U.S. economy, gains attributable to digital trade, barriers to digital trade, and [redacted] technology and its potential for tracking international shipments. The record therefore shows that the Petitioner’s proposed work as an IT marketing professional has substantial merit.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

In her appeal brief, the Petitioner discusses her work experience, academic credentials, specialized training, and professional certifications. The Petitioner’s claims regarding her education, skills, knowledge, and job experience relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*’s first prong.

Additionally, the Petitioner points to a projected shortage of U.S. IT workers, stating that our country “will need to fill 3.5 million industry jobs by 2028, but as many as 2 million will go unfilled.” This

⁵ The appellate submission includes a January 2020 letter from [redacted] indicating that the Petitioner “will be collaborating with [redacted] group . . . in areas such as: [redacted] security technologies, product lifecycle management, benchmark research, [and] management best practices.”

⁶ The Petitioner presents a letter from [redacted] asserting that the Petitioner “has the intention to support and represent [redacted] products, services, and technology to the American market in areas such [as]: [redacted], [redacted] y, [and] big data and analytics.”

projected shortage of workers in the U.S. IT industry is not sufficient to demonstrate the national importance of any particular marketing or IT consulting work proposed by the Petitioner.⁷ A shortage of qualified professionals alone does not render the work of an individual IT marketing specialist nationally important under the *Dhanasar* precedent decision.

Furthermore, the Petitioner asserts that her proposed endeavor offers “broad implications to the national and international digital trade sector” and “macro effects . . . in the U.S. economy.” She contends that her undertaking has national importance due to “the significant economic impact of the digital trade, security technology, and IT industries in the United States, as well as globally.” The Petitioner further argues that “her work functions will produce substantially positive economic opportunities for the nation, due to the ripple effects of her professional activities.” She also claims that her proposed work to market “new and innovative technology, which when implemented by other companies in any industry, will maximize business revenue, and ultimately increase the flow of money in the U.S. on a national level, thus contributing to U.S. gross domestic product.”

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. Although the Petitioner’s statements reflect her intention to provide marketing and IT services for [] and consulting services for [] and [] she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond [] and her clientele to impact the marketing field, IT industry, or U.S. economy more broadly at a level commensurate with national importance.

In addition, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter

⁷ The U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. A determination as to whether the benefits inherent in the labor certification process are outweighed by other factors favorable to the Petitioner relates to the balancing analysis set forth under the third prong of the *Dhanasar* framework.

of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.